

section 211(a)(1)(B) or 211(c) of the Internal Revenue Code of 1939, shall be disclosed on the return. In the event that securities are held in the name of a person other than the actual or beneficial owner, the name and address of such person shall be furnished with the claim. In the case of a claim involving an overpayment of tax upon dividends or interest paid by a Greek corporation, a statement that the dividends or interest were paid by such a corporation shall be included in the claim. If the claim relates to other interest, copyright royalties and the like, pensions, or life annuities, there shall also be included in such claim:

(1) A statement that, at the time when such item or items of income were derived from which the excess tax was withheld, (i) the taxpayer was neither a citizen nor a resident of the United States but was a resident of Greece, or, in the case of a corporation, (ii) the taxpayer was a Greek corporation;

(2) A statement that the taxpayer at no time during the taxable year in which such income was derived was engaged in trade or business within the United States through a permanent establishment situated therein; and

(3) In the case of a claim involving an overpayment of tax upon interest paid by a domestic corporation to a Greek corporation, a statement that the Greek corporation, at the time when the interest was paid, did not control, directly or indirectly, more than 50 percent of the entire voting power of all classes of stock of the United States domestic corporation. If the relationship existing between the Greek corporation and the domestic corporation at the time when such interest was paid was such as to render uncertain whether the exemption granted by Article VI (1) of the convention is applicable to such interest, there shall be furnished a full statement of all the facts pertinent to a determination of the question.

(c) If, however, the taxpayer is an individual who during the taxable year derived from sources within the United States income which consists exclusively of pensions or life annuities entitled to the benefit of Article XI of the convention, the statement specified in

paragraph (b)(2) of this section shall not be required.

PART 503—GERMANY

Subpart—Withholding of Tax

Sec.

503.1 Introductory.

503.2 Dividends.

503.3 Interest.

503.4 Patent and copyright royalties and film rentals.

503.5 Private pensions and private life annuities.

503.6 Release of excess tax withheld at source.

503.7 Information to be furnished in ordinary course.

503.8 Beneficiaries of a domestic estate or trust.

503.9 Land Berlin.

AUTHORITY: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

SOURCE: Treasury Decision 6122, 20 FR 682, Feb. 1, 1955, as amended at 25 FR 14021, Dec. 31, 1960, unless otherwise noted.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, part 503 was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

Subpart—Withholding of Tax

§ 503.1 Introductory.

(a) The income tax convention between the United States and the Federal Republic of Germany, signed on July 22, 1954, and proclaimed by the President of the United States on December 24, 1954, referred to in this part as the convention, provides in part as follows, effective for taxable years beginning on or after January 1, 1954:

ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The Federal income taxes, including surtaxes and excess profits taxes;

(b) In the case of the Federal Republic: The income tax, the corporation tax and the Berlin emergency contribution (Notopfer).

(2) The present Convention shall also apply to any other income or profits tax of a substantially similar character which may be imposed by one of the contracting States

Internal Revenue Service, Treasury

§ 503.1

after the date of signature of the present Convention.

ARTICLE II

(l) As used in this Convention:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia;

(b) The term "Federal Republic" means the Federal Republic of Germany and when used in a geographical sense means the territory over which the Basic Law for the Federal Republic of Germany is in effect;

(c) The term "permanent establishment" means a branch, office, factory, workshop, warehouse, mine, stone quarry or other place of exploitation of the ground or soil, permanent display and sales office, or a construction or assembly project or the like the duration of which exceeds or will likely exceed twelve months, or other fixed place of business; but does not include the casual and temporary use of mere storage facilities, nor does it include an agent or employee unless the agent or employee has full power for the negotiation and concluding of contracts on behalf of the enterprise and also habitually exercises this power, or has a stock of merchandise from which he regularly fills orders on behalf of the enterprise. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a commission agent, broker, custodian or other independent agent, acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods and merchandise shall not of itself constitute such fixed place of business a permanent establishment of the enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation. The maintenance within the territory of one of the contracting States by an enterprise of the other contracting State of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory;

(d) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "German enterprise";

(e) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on in the United States by a resident (including an individual

in his individual capacity or as a member of a partnership) or a fiduciary of the United States or by a United States corporation or other entity; the term "United States corporation or other entity" means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States;

(f) The term "German enterprise" means an industrial or commercial enterprise or undertaking carried on in the Federal Republic by a natural person (including an individual in his individual capacity or as a member of a partnership) resident in the Federal Republic or by a German company; the term "German company" means juridical persons together with entities treated as juridical persons for tax purposes under the laws of the Federal Republic; and

(g) The term "competent authorities" means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of the Federal Republic, the Federal Ministry of Finance.

(2) In the application of the provisions of this Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which the term has under its own applicable laws. For the purposes of this Convention "residence" in the Federal Republic shall include the customary place of abode therein.

* * * *

ARTICLE VI

(1) The rate of tax imposed by the United States shall not exceed 15 percent in the case of dividends from sources within the United States derived by a German company not having a permanent establishment in the United States and owning at least 10 percent of the voting stock of the corporation paying such dividend.

* * * *

(3) If, subsequent to the date of signature of this Convention, the percentage of stock ownership provided in section 131(f)(1) of the Internal Revenue Code [of 1939] is reduced, the percentage of stock ownership provided in paragraphs 1 and * * * of this Article shall likewise be deemed to be simultaneously reduced.

ARTICLE VII

Interest on bonds, notes, debentures, securities or on any other form of indebtedness (exclusive of interest on debts secured by mortgages on farms, timberlands or real property used wholly or partly for housing purposes) derived, bona fide as interest.

§ 503.1

(A) by a natural person resident in the Federal Republic, or by a German company, not having a permanent establishment in the United States, shall be exempt from tax by the United States; or

* * * * *

ARTICLE VIII

Royalties and other amounts derived as bona fide consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trade-marks and other like property and rights (including rentals and like payments in respect to motion picture films or for the use of industrial, commercial or scientific equipment), derived

(A) by a natural person resident in the Federal Republic, or by a German company, not having a permanent establishment in the United States, shall be exempt from tax by the United States; or

* * * * *

ARTICLE IX

(1) Income from real property situated in one of the contracting States (including gains derived from the sale or exchange of such property and interest on debts secured by mortgages on farms, timberlands, or real property used wholly or partly for housing purposes) and royalties in respect of the operation of mines, stone quarries or other natural resources derived by a resident or corporation or other entity or company of the other contracting State, shall be taxable only by the former State.

(2)(a) A natural person resident in the Federal Republic or a German company deriving from sources within the United States any item of income coming within the scope of paragraph (1) of this Article, may, for any taxable year, elect to be subject to tax by the United States on a net income basis as if such resident or company were engaged in trade or business within the United States through a permanent establishment therein.

* * * * *

ARTICLE XI

(1)(a) Wages, salaries and similar compensation and pensions paid by the United States or by its states, territories or political subdivisions, to an individual (other than a German citizen) shall be exempt from tax by the Federal Republic.

(b) Wages, salaries and similar compensation and pensions paid by the Federal Republic, Laender or municipalities, or by a public pension fund, to an individual (other than a citizen of the United States and other than an individual who has been admitted to the

26 CFR Ch. I (4-1-00 Edition)

United States for permanent residence therein) shall be exempt from tax by the United States.

(c) For the purposes of this paragraph the term "pensions" shall be deemed to include annuities paid to a retired civilian government employee.

(2) Private pensions and private life annuities which are from sources within one of the contracting States and are paid to individuals residing in the other contracting State shall be exempt from taxation by the former State.

(3) The term "pensions", as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(4) The term "life annuities", as used in this Article, means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

* * * * *

ARTICLE XIV

(1) Dividends and interest paid by a German company (other than a United States corporation) shall be exempt from United States tax where the recipient is a non-resident alien or a foreign corporation.

* * * * *

ARTICLE XVI

(1) The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect such taxes imposed by the other contracting State as though such taxes were the taxes of the former State as will ensure that any exemption or reduced rate of tax granted under the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

(3) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation

Internal Revenue Service, Treasury

§ 503.2

to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

ARTICLE XVII

* * * * *

(2) For the settlement of difficulties or doubts in the interpretation or application of the present Convention or in respect of its relation to Conventions of the contracting States with third States the competent authorities of the contracting States shall reach a mutual agreement as quickly as possible.

ARTICLE XVIII

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded, by the laws of one of the contracting States in the determination of the tax imposed by such State, or by any other agreement between the contracting States.

* * * * *

ARTICLE XIX

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

ARTICLE XX

(1) The present Convention shall also apply from the date specified in paragraph (1) of Article XXI to Land Berlin which for the purposes of this Convention comprises those areas over which the Berlin Senate exercises jurisdiction.

(2) It is a condition to the application of this Convention to Berlin in accordance with the preceding paragraph that the Government of the Federal Republic shall previously have furnished to the Government of the United States of America a notification that all legal procedures in Berlin necessary for the application of this Convention therein have been complied with.

(3) After application of this Convention to Land Berlin in accordance with paragraphs (1) and (2) of this Article, references in this Convention to the Federal Republic shall also be considered references to Land Berlin.

ARTICLE XXI

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Bonn as soon as possible. It shall have effect for the taxable years beginning on or after the first day of January of the year in which such exchange takes place.

(2) The present Convention shall continue effective for a period of five years beginning with the calendar year in which the exchange of the instruments of ratification takes place and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January next following the expiration of the six-month period.

* * * * *

(b) As used in this part, any term defined in the convention shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws.

§ 503.2 Dividends.

(a) *General.* (1) Dividends paid by a German company (other than a United States corporation) and received in taxable years beginning on or after January 1, 1954, by a nonresident alien or a foreign corporation are exempt from United States tax under the provisions of Article XIV of the convention. Such dividends are, therefore, not subject to the withholding of United States tax at source.

(2) The rate of United States tax imposed by the Internal Revenue Code upon dividends (other than dividends falling within the scope of subparagraph (1) of this paragraph) derived from sources within the United States in taxable years beginning on or after January 1, 1954, by a German company (other than a United States corporation) shall not exceed 15 percent under

the provisions of Article VI of the convention if (i) such company at no time during the taxable year in which such dividends are derived has a permanent establishment in the United States and (ii) such company owns, at the time the dividends are paid, 10 percent or more of the voting stock of the paying corporation.

(b) *Application of reduced rate of withholding.* (1) To secure withholding of United States tax at the rate of 15 percent at source in the case of dividends to which paragraph (a)(2) of this section is applicable, the German company shall notify the withholding agent by letter in duplicate that such income is subject to the reduced rate of United States tax under the provisions of Article VI of the convention. The letter of notification shall be signed by an officer of the company and shall show the name and address of the corporation paying the dividend, the name and address of the German company receiving the dividend, and the official title of the officer signing the letter. It shall contain a statement (i) that the owner of the dividend is a German company (other than a United States corporation), (ii) that the owner at no time during the current taxable year had a permanent establishment in the United States, and (iii) that the German company owns 10 percent or more of the voting stock of the corporation paying such dividend.

(2) This letter of notification, which shall constitute authorization for application of the reduced rate of withholding of United States tax at source, shall be filed with the withholding agent for each successive 3-calendar-year period during which such income is paid. For this purpose, the first such period shall commence with the beginning of the calendar year in which such income is first paid on or after January 1, 1954. Each such letter filed with any withholding agent shall be filed not later than 20 days preceding the date of the first payment within each successive period, or, if that is not possible because of special circumstances, as soon as possible after such first payment.

(3) If such letter is also to be used as authorization for the release, pursuant to § 503.6(a)(3), of excess tax withheld

from dividends, it shall also contain a statement (i) that, at the time when the dividends were derived from which the excess tax was withheld, the owner was a German company (other than a United States corporation), (ii) that the owner at no time during the taxable year in which such dividends were derived had a permanent establishment in the United States and (iii) that the German company owned, at the time when such dividends were paid, 10 percent or more of the voting stock of the corporation paying such dividends.

(4) Once a letter has been filed in respect of any 3-calendar-year period, no additional letter need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an additional letter shall be filed by the taxpayer. If, after filing a letter of notification, the taxpayer ceases to be eligible for the reduction in rate of United States tax granted by the convention in respect to such dividends, such taxpayer shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the stock as recorded on the books of the payer the reduction in the rate of withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(5) Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the District Director of Internal Revenue, Audit Division, Alien Returns Section, Baltimore 2, Maryland.

(c) *Dividends paid to German company where degree of stock ownership uncertain.* (1) In any case in which a German company (other than a United States corporation) anticipates the receipt of dividends described in paragraph (a)(2) of this section and the relationship existing between the German company and the paying corporation is such as to render uncertain whether, by reason of the requirement as to stock ownership, the reduction in rate of United States tax granted by Article VI of the convention will apply to such dividends, the German company shall not undertake to file the letter of notification prescribed by paragraph (b)(1) of

this section unless it has, prior to such filing, applied for and received from the Commissioner of Internal Revenue, Washington 25, D.C., a determination that such German company owns 10 percent or more of the voting stock of the paying corporation. The application to the Commissioner shall contain a full statement of all the facts pertinent to a determination of the question.

(2) As soon as practicable after the application has been filed, the Commissioner of Internal Revenue will determine whether the German company owns sufficient voting stock of the paying corporation to permit it to claim the benefit of Article VI of the convention in the case of such dividends and shall notify the German company of his determination. The German company shall forthwith file with the paying corporation a copy of the Commissioner's letter of notification.

(3) If the Commissioner's determination is that the German company does own 10 percent or more of the voting stock of the paying corporation, the German company may thereafter, if otherwise qualified, secure the reduced rate of withholding at the source with respect to subsequent payments of such dividends, by filing the letter of notification in accordance with paragraph (b) of this section.

(4) A determination by the Commissioner that the German company does own sufficient voting stock of the paying corporation to permit it to claim the benefit of Article VI of the convention will apply until such time as the stock ownership of the paying corporation has changed to the extent that, because of such change, dividends to be received from the paying corporation by the German company no longer qualify for the reduced rate of United States tax under Article VI of the convention. If such change in stock ownership occurs, the German company shall promptly notify both the Commissioner of Internal Revenue and the paying corporation of the then existing facts with respect to such stock ownership.

(5) In any case in which a German company (other than a United States corporation) has received on or after January 1, 1954, dividends described in

paragraph (a)(2) of this section and the relationship existing between the German company and the paying corporation was, at the time the dividends were paid, such as to render uncertain whether, by reason of the requirement contained in Article VI of the convention as to stock ownership, such dividends qualified for the reduced rate of United States tax, the German company shall apply to the Commissioner of Internal Revenue for a similar determination as to the degree of stock ownership at the time the dividends were paid. If the Commissioner's determination is that at such time the degree of stock ownership was such as to permit the application of the reduced rate of United States tax granted by Article VI of the convention, his letter of notification may, subject to the provisions of § 503.6(b), authorize the release of excess tax withheld with respect to such dividends.

§ 503.3 Interest.

(a) *General.* (1) Interest paid by a German company (other than a United States corporation) and received in taxable years beginning on or after January 1, 1954, by a nonresident alien or a foreign corporation is exempt from United States tax under the provisions of Article XIV of the convention. Such interest is, therefore, not subject to the withholding of United States tax at source.

(2) Interest (other than interest falling within the scope of subparagraph (1) of this paragraph) on bonds, notes, debentures, securities, or on any other form of indebtedness, including interest on obligations of the United States and of instrumentalities of the United States, which is derived, bona fide as interest, in taxable years beginning on or after January 1, 1954, by a natural person (other than a citizen or resident of the United States) resident in the Federal Republic of Germany, or by a German company (other than a United States corporation), is exempt from United States tax under the provisions of Article VII of the convention if such person or company at no time during the taxable year in which such interest is derived has a permanent establishment in the United States. Such interest is, therefore, not subject to the

withholding of United States tax at source.

(3) The provisions of subparagraph (2) of this paragraph shall have no application to interest on debts secured by mortgages on farms, timberlands, or real property used wholly or partly for housing purposes.

(b) *Application of exemption from withholding.* (1) To avoid withholding of United States tax at source in the case of coupon bond interest to which paragraph (a)(2) of this section is applicable, the resident of the Federal Republic of Germany or the Germany company shall, for each issue of bonds, file Form 1001-GER in duplicate when presenting the interest coupons for payment. This form shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor, the name and address of the owner of the interest, and the amount of the interest. It shall contain a statement (i) that the owner is neither a citizen nor a resident of the United States but is a resident of the Federal Republic of Germany, or, in the case of a company, the owner is a German company (other than a United States corporation), and (ii) that the owner has no permanent establishment in the United States.

(2) The exemption from United States tax contemplated by Article VII of the convention, insofar as it concerns coupon bond interest, is applicable only to the owner of the interest. The person presenting the coupon or on whose behalf it is presented shall, for the purpose of the exemption from tax, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon or on whose behalf it is presented is not the owner of the bond, Form 1001, and not Form 1001-GER, shall be executed.

(3) The original and duplicate of Form 1001-GER shall be forwarded by the withholding agent to the District Director of Internal Revenue, Audit Division, Alien Returns Section, Baltimore 2, Maryland, with the quarterly return on Form 1012. Form 1001-GER need not be listed on Form 1012.

(4) To avoid withholding of United States tax at source in the case of interest, other than coupon bond interest, to which paragraph (a)(2) of this section is applicable, the resident of the Federal Republic of Germany or the German company shall notify the withholding agent by letter in duplicate that such income is exempt from United States tax under the provisions of Article VII of the convention. The letter of notification shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor and the name and address of the owner of the interest. It shall contain a statement (i) that the owner is neither a citizen nor a resident of the United States but is a resident of the Federal Republic of Germany, or, in the case of a company, the owner is a German company (other than a United States corporation), and (ii) that the owner has at no time during the current taxable year had a permanent establishment in the United States.

(5) This letter of notification, which shall constitute authorization for the payment of such interest without withholding of United States tax at source, shall be filed with the withholding agent for each successive 3-calendar-year period during which such income is paid. For this purpose, the first such period shall commence with the beginning of the calendar year in which such income is first paid on or after January 1, 1954. Each such letter filed with any withholding agent shall be filed not later than 20 days preceding the date of the first payment within each successive period, or, if that is not possible because of special circumstances, as soon as possible after such first payment.

(6) If such letter is also to be used as authorization for the release, pursuant to § 503.6(a)(3), of excess tax withheld from interest, other than coupon bond interest, it shall also contain a statement (i) that, at the time when the interest was derived from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of the Federal Republic of Germany, or, in the case of a company, the owner was a German company (other than a

United States corporation), and (ii) that the owner at no time during the taxable year in which such interest was derived had a permanent establishment in the United States.

(7) Once a letter has been filed in respect of any 3-calendar-year period, no additional letter need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an additional letter shall be filed by the taxpayer. If, after filing a letter of notification, the taxpayer ceases to be eligible for the exemption from United States tax granted by the convention in respect to such interest, such taxpayer shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the interest as recorded on the books of the payer, the exemption from withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(8) Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the District Director of Internal Revenue, Audit Division, Alien Returns Section, Baltimore 2, Maryland.

§ 503.4 Patent and copyright royalties and film rentals.

(a) *General.* (1) Royalties and other amounts derived in taxable years beginning on or after January 1, 1954, by a natural person (other than a citizen or resident of the United States) resident in the Federal Republic of Germany, or by a German company (other than a United States corporation), as bona fide consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trade-marks, and other like property and rights, are exempt from United States tax under the provisions of Article VIII of the convention if such person or company at no time during the taxable year in which such income is derived has a permanent establishment in the United States. Such items of income, are, therefore, not subject to the withholding of United States tax at source.

(2) The provisions of this section shall apply to rentals and like pay-

ments in respect to motion picture films or for the use of industrial, commercial, or scientific equipment.

(b) *Application of exemption from withholding.* (1) To avoid withholding of United States tax at source in the case of the income to which this section is applicable, the resident of the Federal Republic of Germany or the German company shall notify the withholding agent by letter in duplicate that such income is exempt from United States tax under the provisions of Article VIII of the convention. The provisions of § 503.3(b) relating to the execution, filing, and effective period of the letter of notification prescribed therein with respect to interest, including its use for the release of excess tax withheld, are equally applicable with respect to the income falling within the scope of this section.

(2) Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the District Director of Internal Revenue, Audit Division, Alien Returns Section, Baltimore 2, Maryland.

§ 503.5 Private pensions and private life annuities.

(a) *General.* Private pensions and private life annuities, as defined in Article XI (3) and (4) of the convention, which are received from sources within the United States in taxable years beginning on or after January 1, 1954, by a nonresident alien individual who is a resident of the Federal Republic of Germany are exempt from United States tax under the provisions of Article XI(2) of the convention. Such items of income are, therefore, not subject to the withholding of United States tax at source.

(b) *Application of exemption from withholding.* (1) To avoid withholding of United States tax at source in the case of the items of income to which paragraph (a) of this section is applicable, the nonresident alien individual who is a resident of the Federal Republic of Germany shall notify the withholding agent by letter in duplicate that such income is exempt from United States tax under the provisions of Article XI of the convention. The letter of notification shall be signed by the owner of the income, shall show the name and

§ 503.6

26 CFR Ch. I (4-1-00 Edition)

address of both the payer and the owner of the income, and shall contain a statement that the owner, an individual, is neither a citizen nor a resident of the United States but is a resident of the Federal Republic of Germany.

(2) If such letter is also to be used as authorization for the release, pursuant to § 503.6(a)(3), of excess tax withheld from such items of income, it shall also contain a statement that the owner was, at the time when the income was received from which the excess tax was withheld, neither a citizen nor a resident of the United States but was a resident of the Federal Republic of Germany.

(3) This letter shall constitute authorization for the payment of such items of income without withholding of United States tax at source unless the Commissioner of Internal Revenue subsequently notifies the withholding agent that the tax shall be withheld with respect to payments of such items of income made after receipt of such notice. If, after filing a letter of notification, the owner of the income ceases to be eligible for the exemption from United States tax granted by the convention in respect to such income, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of such income as recorded on the books of the payer, the exemption from withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(4) Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the District Director of Internal Revenue, Audit Division, Alien Returns Section, Baltimore 2, Maryland.

§ 503.6 Release of excess tax withheld at source.

(a) *General.* (1) In order to give the convention effective application at the earliest practicable date, the exemptions from, and reduction in the rate of, withholding of United States tax at source granted by this Treasury decision are hereby made effective beginning January 1, 1954, contingent upon

compliance with the applicable provisions of §§ 503.2 through 503.5.

(2) In the case of dividends and interest paid by a German company (other than a United States corporation) to a nonresident alien or to a foreign corporation, if United States tax at the statutory rate has been withheld on or after January 1, 1954, there shall be released by the withholding agent and paid over to the person from whom it was withheld, an amount equal to the tax so withheld from such items.

(3) In the case of every taxpayer whose address at the time of payment was in the Federal Republic of Germany and who furnishes to the withholding agent the letter of notification prescribed in §§ 503.2(b), 503.3(b), 503.4(b), and 503.5(b) as authorization for the release of excess tax withheld, if United States tax at the statutory rate has been withheld on or after January 1, 1954, from the items of income in respect of which such letter is prescribed in such sections, there shall be released (except as provided in paragraph (b) of this section) by the withholding agent and paid over to the person from whom it was withheld:

(i) In the case of dividends, the difference between the tax so withheld and the tax required to be withheld pursuant to § 503.2(b); and

(ii) In the case of interest (other than coupon bond interest), copyright royalties and other items to which § 503.4 is applicable, and private pensions and private life annuities as defined in Article XI of the convention, an amount equal to the tax so withheld from such items.

(4) In the case of every taxpayer whose address at the time of payment was in the Federal Republic of Germany and who furnishes to the withholding agent Form 1001-GER clearly marked "Substitute" and executed in accordance with § 503.3(b), if United States tax at the statutory rate has been withheld from coupon bond interest on or after January 1, 1954, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to the tax so withheld from such interest. One such substitute form shall be filed in duplicate with respect to each

issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by the taxpayer in the calendar year in which the excess tax was withheld and with respect to which such excess is released.

(5) The original and duplicate of substitute Form 1001-GER shall be forwarded by the withholding agent to the District Director of Internal Revenue, Audit Division, Alien Returns Section, Baltimore 2, Maryland, with the quarterly return on Form 1012. Substitute Form 1001-GER need not be listed on Form 1012.

(b) *Interest paid where degree of stock ownership is determined.* If United States tax at the statutory rate has been withheld on or after January 1, 1954, from dividends described in § 503.2(a)(2) and paid to a German company (other than a United States corporation), and if the relationship existing between the German company and the paying corporation was, at the time the dividends were paid, such as to render uncertain whether, by reason of the requirement contained in Article VI of the convention as to stock ownership, such dividends qualified for the reduced rate of United States tax, the withholding agent shall release and pay over to the German company the difference between the tax so withheld and the tax required to be withheld pursuant to § 503.2(b), only if the German company (1) furnishes to the withholding agent a copy of the Commissioner's authorization of release prescribed in § 503.2(c)(5), and (2) files the letter of notification prescribed in § 503.2(b)(1).

§ 503.7 Information to be furnished in ordinary course.

(a) *General.* In compliance with the provisions of Article XVI of the convention the Commissioner of Internal Revenue will transmit to the Federal Ministry of Finance, as soon as practicable after the close of the calendar year 1955 and of each subsequent calendar year during which the convention is in effect, the following information relating to such preceding calendar year:

(1) The duplicate copy of each available Form 1042 Supplement filed pursuant to paragraph (b) of this section;

and

(2) The duplicate copy of each available ownership certificate, Form 1001-GER, filed pursuant to § 503.3(b), and substitute Form 1001-GER, filed pursuant to § 503.6(a), in connection with coupon bond interest.

(b) *Information return.* (1) To facilitate compliance with Article XVI of the convention, every United States withholding agent shall make and file in duplicate with the District Director of Internal Revenue, Baltimore 2, Maryland, an information return on Form 1042 Supplement, with respect to persons having addresses in the Federal Republic of Germany, which shall be filed for the calendar year 1955 and subsequent calendar years. This return shall be filed simultaneously with Form 1042.

(2) There shall be reported on such Form 1042 Supplement all items of fixed or determinable annual or periodical income (and amounts described in section 402(a)(2), section 631 (b) and (c), and section 1235 of the Internal Revenue Code of 1954, which are considered to be gains from the sale or exchange of capital assets) derived from sources within the United States and paid to nonresident aliens and to nonresident foreign corporations, whose addresses at the time of payment were in the Federal Republic of Germany, including such items of income upon which, in accordance with this part, no withholding of United States tax is required; except that any of such items which constitute interest in respect of which Form 1001-GER or substitute Form 1001-GER has been filed in duplicate with the withholding agent are not required to be reported on such Form 1042 Supplement.

§ 503.8 Beneficiaries of a domestic estate or trust.

A nonresident alien who is a resident of the Federal Republic of Germany and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption from United States tax granted by Articles VII, VIII, and XIV of the convention with respect to dividends, interest, and copyright royalties and the like, to the extent such item or items are included in that portion of

§ 503.9

the income of such estate or trust which is (or would, but for such exemption, be) includable in the gross income of the beneficiary, provided that he otherwise satisfies the requirements of these respective articles. In order to be entitled in such instance to the exemption from withholding of United States tax such beneficiary must otherwise satisfy such requirements and shall, where applicable, execute and submit to the fiduciary of such estate or trust in the United States the appropriate letter of notification prescribed in §§ 503.3(b) and 503.4(b).

§ 503.9 Land Berlin.

The convention shall also apply to Land Berlin effective for taxable years beginning on or after January 1, 1954, but only if the notification has been furnished to the United States Government in accordance with Article XX (2) of the convention. After application of the convention to Land Berlin in accordance with Article XX, references in the convention and in this part to the Federal Republic of Germany shall also be considered references to Land Berlin.

PARTS 504–507 [RESERVED]

PART 509—SWITZERLAND

Subpart—Withholding of Tax

Sec.

- 509.1 Introductory.
- 509.2 Dividends.
- 509.3 Interest.
- 509.4 Patent and copyright royalties and film rentals.
- 509.5 Pensions and life annuities.
- 509.6 Natural resource royalties and real property rentals.
- 509.7 Release of excess tax withheld at source.
- 509.8 Addressee not actual owner.
- 509.9 Return of tax withheld and information return with respect to persons whose addresses are in Switzerland.
- 509.10 Beneficiaries of a domestic estate or trust.

Subpart—General Income Tax

- 509.101 Introductory.
- 509.102 Applicable provisions of law.
- 509.103 Scope of the convention.
- 509.104 Definitions.
- 509.105 Industrial and commercial profits.

26 CFR Ch. I (4–1–00 Edition)

- 509.106 Control of a United States enterprise by a Swiss enterprise.
- 509.107 Income from operation of ships or aircraft.
- 509.108 Dividends.
- 509.109 Interest.
- 509.110 Patent and copyright royalties and film rentals.
- 509.111 Real property income and natural resource royalties.
- 509.112 Compensation for labor or personal services.
- 509.113 Government wages, salaries, and pensions.
- 509.114 Private pensions and life annuities.
- 509.115 Visiting professors or teachers.
- 509.116 Students or apprentices.
- 509.117 Dividends and interest paid by a foreign corporation.
- 509.118 Credit against United States tax for Swiss tax.
- 509.119 Exchange of information.
- 509.120 Double taxation claims.
- 509.121 Beneficiaries of an estate or trust.
- 509.122 Swiss partnerships.

AUTHORITY: 26 U.S.C. 62, 3791 and 7805.

Subpart—Withholding of Tax

SOURCE: Treasury Decision 5867, 16 FR 11910, Nov. 27, 1951, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, Subpart—Withholding of Tax, consisting of §§ 509.1 through 509.10, was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

§ 509.1 Introductory.

The income tax convention between the United States and the Swiss Confederation, signed May 24, 1951, proclaimed by the President of the United States on October 1, 1951, and effective as to taxable years beginning after December 31, 1950 (referred to in this subpart as the convention), provides in part as follows:

ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America:

The Federal income taxes, including surtaxes and excess profits taxes.

(b) In the case of The Swiss Confederation: